88-1096

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

BARTON BOYD ADAMS,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS COURT OF APPEALS

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QUESTION PRESENTED FOR REVIEW

WHETHER THE INITIAL "APPROACH" OF THE PETITIONER BY THE ARRESTING OFFICER CONSTITUTED A SEIZURE WITHIN THE MEANING OF THE FOURTH AMENDMENT, AND, IF SO, WHETHER THE SEIZURE WAS AN UNREASONABLE INTRUSION UPON THE RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES AS GUARANTEED BY THE FOURTH AMENDMENT.

LIST OF PARTIES

The parties in both the Arkansas Court of Appeals and the lower court (Circuit Court of Jackson County, Arkansas) were as shown herein.

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OPINION BELOW

The opinion of the Arkansas Court of Appeals was rendered on October 26, 1988.

JURISDICTION

This Honorable Court's jurisdiction to review the decision of the Arkansas Court of Appeals (No. CACR 88-24) by Petition for Writ of Certiorari is conferred by Rule 17, Rules of the Supreme Court of the United States. This Petition is presented within sixty (60) days of the entry of the Arkansas Court of Appeals opinion on

October 26, 1988, and is, therefore, timely filed in accordance with Rules of this Honorable Court.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . ."

The Fourth Amendment applies to the states through the Fourteenth Amendment.

No. _____

In The

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BARTON BOYD ADAMS,

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v.

STATE OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS COURT OF APPEALS

STATEMENT OF THE CASE

The Petitioner, Barton Boyd Adams, was charged with the crimes of possession of a controlled substance (marijuana) with the intent to deliver and possession of drug paraphernalia in the Circuit Court of Jackson County, Arkansas, by Information filed by the State of Arkansas on December 30, 1986.

On October 8, 1987, the Petitioner filed a Motion for Suppression of all evidence seized during the stop and search of the Petitioner on December 27, 1986. Petitioner specifically stated in his Motion for Suppression that the stop of Petitioner by the arresting officer deprived Petitioner of his rights sanctioned and guaranteed by the

Fourth Amendment to the United States Constitution. A hearing on Petitioner's Motion for Suppression was held on October 13, 1987. At said hearing, the arresting officer testified that while on routine patrol on December 27, 1986, at approximately 6:30 p.m., he observed a vehicle adjacent to the running field at Remmel Park (a public park) in Newport, Arkansas. The officer testified that he immediately suspected criminal activity based on the then existing circumstances and, therefore, turned in behind the vehicle with his headlights shining into the vehicle and additionally turned his spotlight onto the vehicle and turned on his "take down" lights. The officer testified that he stepped from the marked patrol car, approached the vehicle, tapped on the window and motioned for the driver to roll the window down. The officer testified that after the driver rolled the window down and during his detention of the vehicle, he developed probable cause to make a search and a subsequent arrest. The Trial Court denied Petitioner's Motion for Suppression apparently ruling that the officer's initial stop of the Petitioner was not a "seizure". The Trial Judge stated, " . . . if that vehicle had been moving through the park, I would have suppressed the evidence. You made an excellent argument, but it won't float. If he'd been moving, that would have been suppressed. It would have been suppressed." (Trial Transcript, Volume I, Pages 93, 94).

The case came on for jury trial before the Circuit Court of Jackson County, Arkansas, on October 14, 1987. At trial, the evidence moved to be suppressed by Petitioner was admitted into evidence, notwithstanding Petitioner's renewed objections of the constitutionality of the

stop, search and seizure of all such evidence. Following the jury trial, the Petitioner was found guilty on both counts with which he was charged. Petitioner was fined in the sum of $500.00 for the offense of possession of drug paraphernalia and was fined the sum of $3,000.00 and sentenced to four years in the Arkansas Department of Corrections for the offense of possession of a controlled substance with intent to deliver.

On March 17, 1988, Petitioner timely filed an Appeal in the Arkansas Court of Appeals citing as his Point Relied Upon For Reversal that the lower court erred in denying the Petitioner's Motion for Suppression. On October 26, 1988, the Arkansas Court of Appeals affirmed the lower Court's actions, stating in its opinion, inter alia, that the initial stop or "approach" of the Petitioner by the arresting officer was not a "stop", but merely a request for identification which does not mandate suppression of the evidence against Petitioner.

ARGUMENT

The Fourth Amendment to the United States Constitution provides, "the right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . " The protection is applied to the States through the Fourteenth Amendment to the United States Constitution.

Petitioner submits that the arresting officer's initial stop, approach or contact with Petitioner on the night of December 27, 1986, constituted a seizure and that under

all of the circumstances, the seizure was without a constitutionally reasonable basis and that all evidence subsequently seized should have been suppressed at trial.

The State of Arkansas adopted the position that although the same factual scenario as presented in the case at Bar has never before been presented to an Arkansas Court, the stop of the Petitioner did not amount to a seizure. The State of Arkansas submitted that the seizure did not occur until later during the detention when the officer "patted down" Petitioner. The State of Arkansas, therefore, argues and the Arkansas Court of Appeals agreed that the Fourth Amendment did not apply to the initial stop and, therefore, the arresting officer was not required to have a particularized reasonable suspicion (as required by Arkansas law) for approaching the vehicle.

Petitioner acknowledges that not all interaction between policemen and citizens involves "seizures" within the meaning of the Fourth Amendment. *Terry v. Ohio*, 392 U.S. 1 (1968), *U.S. v. Mendenhall*, 446 U.S. 544 (1980), *Reid v. Georgia*, 448 U.S. 438 (1980). The law is equally clear, however, that a seizure takes place when a police officer uses physical force or a show of authority that restrains an individual's freedom of movement or in view of the circumstances surrounding the incident, causes a reasonable person to believe that he is not free to leave. The Arkansas Criminal Rules are consistent with the decisions of this Honorable Court that a police officer may stop and frisk an individual based on circumstances which fall short of probable cause necessary for arrest and search. Rule 3.1 of the Arkansas Rules of Criminal Procedure says, in part:

> A law enforcement officer lawfully present in any place, may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony or (2) a misdemeanor involving danger or forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct.

The standard for a law enforcement officer identified by Rule 3.1 is "reasonable suspicion". Rule 2.1 of the Arkansas Rules of Criminal Procedure defines "reasonable suspicion" as follows:

> A suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.

The commentary to Rule 2.1 says that while reasonable suspicion is not equatable with probable cause, it is somewhat more than an intuitive guess or a hunch.

The Arkansas Court of Appeals stated in its opinion that it found no fault with Petitioner's assessment of Rules 3.1 and 2.1 of the Arkansas Rules of Criminal Procedure, but that they do not agree that it mandates suppression of the evidence against Petitioner or that the present case must be judged by Rule 3.1. The Arkansas Court of Appeals cited Rule 2.2(a) of the Arkansas Rules of Criminal Procedure as follows:

> A law enforcement officer may request any person to furnish information or otherwise cooperate in the investigation or prevention of crime. The officer may

request the person to respond to questions, to appear at a police station, or to comply with any other reasonable request.

Petitioner does not challenge the validity or constitutionality of any of the herein described rules of Arkansas Criminal Procedure. Petitioner does, however, challenge the constitutionality of their application in accordance with the Fourth Amendment in the present case. The Arkansas Court of Appeals is certainly correct in its recitation of the text of Rule 2.2(a). However, Rule 2.2(a) applies only when an officer who lacks reasonable suspicion to seize or stop an individual approaches that individual to request answers to investigative questions. In the light of the Fourth Amendment, it simply cannot be disputed that once that same officer imposes such restraint over an individual that, in view of all of the surrounding circumstances, the individual reasonably believes he is not free to leave, then an intrusion upon that person's constitutionally guaranteed rights would require some particularized or objective justification. In other words, that individual is protected against unreasonable seizure as guaranteed by the Fourth Amendment and in Arkansas by Rules 3.1 and 2.1 of the Arkansas Rules of Criminal Procedure.

Petitioner submits that the record reflects (through the testimony of the arresting officer) that the arresting officer's initial stop or approach of Petitioner was in such an aggressive manner as to manifest a show of authority that would intimidate any reasonable person to believe that he was not free to disregard the officer's presence and go about his business.

In *Michigan v. Chesternut*, 486 U.S. ___ (1988), a marked police car briefly accelerated to catch up with a man who turned a street corner and began to run when he saw the marked police car. The police car drove alongside the man for a short distance without making any other aggressive moves to approach, stop or detain the individual. While alongside the man, the officers observed him discard a number of packets from one of his pockets. When one of the officers examined the packets, they were found to contain pills and they, thereupon, arrested the man. It was held that the presence of a police car standing alone does not constitute a seizure within the meaning of the Fourth Amendment because it would not have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business. The "whole picture" of the case at Bar establishes a greater police presence and show of authority.

If the issue of whether the arresting officer's approach of Petitioner was a seizure is decided in favor of Petitioner, namely that it was a seizure within the meaning of the Fourth Amendment, then a determination should be made regarding the reasonableness, or lack thereof, of the seizure.

The Court, in *Terry v. Ohio, Supra.*, held that it is first necessary to focus upon the governmental interest which allegedly justifies intrusion upon the constitutionally protected interest of the private citizen in order to assess the reasonableness of the police officer's conduct. The police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion in order to

justify the particular intrusion. The governmental interest involved, of course, is the general interest of effective crime prevention and detection.

The facts in *Terry v. Ohio, Supra.*, reflect that a policeman with 39 year's experience observed the defendant and two other men go through a series of acts, which taken together warranted further investigation. Petitioner submits that in the case at Bar, the arresting officer's testimony in and of itself reflects that there was no such studied observation. To the contrary, the arresting officer categorized the stop and subsequent arrest of Petitioner as a "lucky guess".

In *Brown v. Texas,* 443 U.S. 47 (1979), this Honorable Court held that a police officer's observing a person walk away from another person in an alley located in a neighborhood which is frequented by drug users does not give rise to reasonable suspicion to seize or stop the individual. In *Brown, Supra.*, a seizure occurred only after the defendant continued to refuse to identify himself to the police officers and was arrested under a Texas statute causing such refusal to be a crime. In the present case, the record reflects that the arresting officer's suspicions were raised because the Petitioner was located in an area where crimes had occurred in the past (although the arresting officer was unable to identify any particular crime). Unlike in *Brown, Supra.*, the arresting officer in the present case did not merely approach Petitioner to ascertain his identity, but aggressively manifested a show of authority giving rise to a seizure within the terms of the Fourth Amendment. And when the reasonableness of that seizure is balanced between the public interest and Petitioner's right to Fourth Amendment protection to

arbitrary interference by law officers, in light of the record ("whole picture") that balance tilts decidedly in favor of Petitioner. See *U.S. v. Brignoni-Ponce,* 422 U.S. 873 (1975). In *Delaware v. Prouse,* 440 U.S. 648 (1979), this Honorable Court held that a police officer's random stop of an automobile and detention of the driver for check of driver's license and vehicle's registration violated the Fourth Amendment as an unreasonable seizure. The Court's finding was based on the reasoning that the police officer did not have articulable or reasonable suspicion that the motorist was unlicensed or that the automobile was unregistered or that either the vehicle or the occupant was otherwise subject to seizure for violation of law. The Court pointed out that to hold otherwise would subject every occupant of every vehicle on the roads to a seizure at the unbridled discretion of law enforcement officials on the basis of a state interest in promoting roadway safety. In the present case, Petitioner submits that the question of his Fourth Amendment rights protecting against unreasonable searches and seizures were decided in a way which conflicts with *Delaware, Supra.* Petitioner submits to this Honorable Court that based upon the factual circumstances contained in the record, if the decision of the Arkansas Court of Appeals stands, then the local law enforcement officers in Newport, Arkansas, can stop, question, detain and possibly subsequently arrest and search any individual walking through, driving through or parked in Remmel Park located in Newport, Arkansas. Such a decision unleashes the unbridled discretion of law enforcement officers that *Delaware, Supra.,* intends to prevent.

Petitioner submits that based on the record of the present case, the arresting officer clearly acted in an aggressive manner and manifested a show of authority that would intimidate any reasonable person into believing that he was being detained and was not free to leave and resume his business ignoring the police presence. Petitioner submits that such action by the arresting officer amounted to a seizure within the definition of the Fourth Amendment to the United States Constitution. Additionally, Petitioner submits that when all of the factual and exigent circumstances reflected in the record are considered and taken as a "whole picture", all such circumstances fail to reflect the specific and articulable facts necessary to establish reasonable suspicion by the arresting officer that Petitioner was committing, had committed or was about to commit or engage in criminal activity and that his seizure of the Petitioner was, therefore, unreasonable under the protection of the Fourth Amendment. All evidence seized by the arrest and search subsequent to the unreasonable seizure of Petitioner should have been suppressed at the trial of the Petitioner. Without the review of this Honorable Court on Writ of Certiorari, the question of the reasonableness of the seizure of Petitioner will go unsettled and the decision regarding the existence of a "seizure" at the initial stop of Petitioner by the arresting officer will remain decided in a way in conflict with the previous decisions of this Court.

CONCLUSION

The guarantees afforded Petitioner against unreasonable searches and seizures by the Fourth Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment to the United States Constitution have gone unprotected and unrecognized. The issues presented herein fall within the considerations set forth in Rule 17 of the Rules of the United States Supreme Court. Petitioner respectfully requests that this Honorable Court grant his Petition for Certiorari as set forth herein.

Respectfully Submitted,

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APPENDIX "A"

DIVISION II

ARKANSAS COURT OF APPEALS

No. CACR 88-24

Opinion Delivered OCTOBER 26, 1988

BARTON BOYD ADAMS	)	APPEAL FROM JACKSON
APPELLANT	)	CIRCUIT COURT
	)	
V.	)	HONORABLE HAROLD S.
	)	
STATE OF ARKANSAS	)	ERWIN, JUDGE
	)	
APPELLEE	)	AFFIRMED

MELVIN MAYFIELD, *Judge*

Appellant, Barton Boyd Adams, appeals (1) his conviction of possession of a controlled substance with intent to deliver for which he was sentenced to pay a fine of $3,000.00 and to serve four years in the Arkansas Department of Correction, and (2) his conviction of possession of drug paraphernalia for which he was fined $500.00.

There is evidence that Officer Joe Newsom of the Newport Police Department was on routine patrol about 6:30 p.m. on December 27, 1986, when he noticed a car, with no lights on, parked in a dark area near the high school. He also noticed that the vehicle was occupied but the motor was not running even thought the weather was cold. Because of these facts and because there had been several burglaries in the area, Newsom pulled in behind the car and turned his spotlights on it. He approached the car on the driver's side, tapped on the window and asked to see the identification of the two occupants. When the window was rolled down, the officer smelled a strong odor of marijuana coming from inside the vehicle.

Newsom then radioed his headquarters for a license check on the car and warrant check on the occupants. While waiting for the results, he observed the male passenger, appellant herein, making unusual movements as if he were stuffing something down the front of his pants. Newsom then went to the passenger's side of the car, asked appellant to get out of the car and when he did, Newsom frisked him. A large plastic bag containing seven small plastic bags of what the officer recognized as marijuana, two roach clips, and some scales were found.

At a hearing on appellant's motion to suppress the evidence, in response to questions by defense counsel, Officer Newsom characterized his actions as a "lucky guess, policemen's intuition, just a hunch." Appellant points out that under A.R.Cr.P. Rule 3.1, a law enforcement officer in the performance of his duties may stop and detain a person whom he reasonably suspects "is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property." "Reasonable suspicion" is defined in A.R.Cr.P. Rule 2.1 as:

> [A] suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.

According to the commentary on A.R.Cr.P. Rule 2.1, a reasonable suspicion is not the equivalent of probable cause but is "somewhat more than an intuitive guess or hunch." Appellant, therefore, emphasizes Officer

Newsom's testimony that his investigation of appellant's car was only a hunch, policemen's intuition, or a lucky guess and concludes there was no reasonable suspicion for a stop. Appellant argues there was a violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution and that, under the exclusionary rule, the evidence seized should have been suppressed.

Appellant cites *Reeves v. State*, 20 Ark. App. 17, 722 S.W.2d 880 (1987), where we explained that the justification for an investigative stop depends upon whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons to suspect that the person or vehicle may be involved in criminal activity. 20 Ark. App. at 22. *See also Hill v. State*, 275 Ark. 71, 628 S.W.2d 284 (1982), *cert. denied*, 459 U.S. 882 (1982). Appellant then cites *Van Patten v. State*, 16 Ark. App. 83, 697 S.W.2d 919 (1985), where we reversed a conviction of driving while intoxicated because the police officer who stopped appellant did not have specific, particularized, and articulable reasons to suspect that a crime had been committed.

While we find no fault with appellant's assessment of the law as stated in the cited cases, we do not agree that it mandates suppression of the evidence against him. In *Van Patten*, a Little Rock policeman received two radio calls, shortly after 11:30 p.m., in regard to a loud party disturbance at an apartment complex and a suspect who had driven off in a brown Jeep. The officer spotted a brown Jeep at an intersection near the apartments, stopped it, and discovered that the driver staggered and smelled strongly of alcohol. Although he registered 0.15% blood

alcohol on the breathalyzer machine, his conviction for driving while intoxicated was reversed because a majority of this court thought that the officer making the stop did not have a "reasonable suspicion" the appellant had been involved in criminal activity. The court thought that A.R.Cr.P. Rule 3.1 had been violated because the radio dispatches gave very vague, general information about a loud party and a brown Jeep and the officer had not confirmed the complaint before stopping appellant.

We do not agree, however, that the present case must be judged by Rule 3.1. Another Rule of Criminal Procedure, Rule 2.2(a), provides:

> A law enforcement officer may request any person to furnish information or otherwise cooperate in the investigation or prevention of crime. The officer may request the person to respond to questions, to appear at a police station, or to comply with any other reasonable request.

In *Baxter v. State*, 274 Ark. 539, 626 S.W.2d 935 (1982), a Little Rock police officer stopped appellant's car in a park, near a jewelry store that had just been robbed, to inquire if appellant had seen anyone else in the park. That stop led to the discovery of two suspects in the jewelry store robbery who were in appellant's car and to the recovery of the jewelry and two guns. The Arkansas Supreme Court examined the validity of the stop and found it reasonable under Rule 2.2(a). The court's opinion stated:

> The crucial issue in this case is whether the initial stop of appellant was valid under state and federal law. If the stop is found to be valid, the logical progression of events which followed resulted in probable cause for the arrest. The subsequent search

of appellant's car after the arrest was a search incident to a lawful arrest and valid under the recent case of *New York v. Belton*, 450 U.S. 1028, 101 S.Ct. 2860 (1981).

Cases regarding the police authority to make investigatory stops based upon reasonable suspicion that a vehicle or a person is involved in criminal activity are inapplicable to the stop at issue here. *See U.S. v. Cortez*, 449 U.S. 411 (1981) and *Terry v. Ohio*, 392 U.S. 1 (1968). . . .

Involved here is the question of the extent of permissible interruption a citizen must bear to accommodate a law enforcement officer who is investigating a crime. The practical necessities of law enforcement and the obvious fact that any person in society may approach any other person for purposes of requesting information make it clear the police have the authority to approach civilians.

There is noting in the Constitution which prevents the police from addressing questions to any individual. *See Terry v. Ohio, supra.* However, the approach of a citizen pursuant to a policeman's investigative law enforcement function must be reasonable under the existent circumstances and requires a weighing of the government's interest for the intrusion against the individual's right to privacy and personal freedom. To be considered are the manner and intensity of the interference, the gravity of the crime involved, and the circumstances attending the encounter. [Citation omitted.]

Rule 2.2, Ark. Rules Crim. Proc., Ark. Stat. Ann., Vol. 4A (Repl. 1977) is a codification and an accommodation of these interests: . . . .

274 Ark. at 542-43.

The federal courts have reached the same conclusion reached in *Baxter.* In *United States v. Pajari*, 715 F.2d 1378 (8th Cir. 1983), D.E.A. officers had obtained a search

warrant for appellant's house. After this, he was seen driving down the street and agents followed him as he pulled into a parking lot and stopped. The agents then approached the car to ask him to be at his house when the search took place. When appellant made a suspicious move, which agents interpreted as possibly reaching for a gun, they ordered him out of the car, and while conducting a pat-down search, they found cocaine. On appeal, he argued that the officers' initial approach to his car amounted to an unlawful seizure, supported by neither probable cause nor reasonable articulable suspicion that he was engaged in wrongdoing. The court stated:

> In this case, we conclude that there was no "seizure" or "stop" until Pajari was ordered to raise his hands and leave his car, which was prompted by Detective Fontana's reasonably based fear that Pajari was reaching for a weapon. Only at the point when Pajari was ordered to raise his hands and exit the car was there any demonstration of force or authority creating a reasonable apprehension on Pajari's part that his freedom of movement was restrained.

715 F.2d at 1381.

The District of Columbia Court of Appeals considered a case similar to the instant case in *Purce v. United States*, 482 A.2d 772 (D.C. 1984). On a routine patrol through a parking lot where several cars had been broken into, an officer discovered appellant asleep in a car registered to a woman. The officer tapped on the window, woke the appellant and asked for identification. While appellant was searching his pockets and the glove compartment, the officer noticed a package of cigarette papers and a brown manila envelope of the sort commonly used to package marijuana lying on the console between the two front seats. The officer again asked for

identification, and when none was presented, the officer asked appellant to get out of the car. As appellant stepped out, he reached back inside to get his shoes, and the officer observed what he thought was a gun. Appellant was then patted down and the floor mat of the car was lifted. This exposed a gun, and the appellant was arrested for firearms violations. He moved to suppress the evidence on the grounds that the officer's request for identification was a seizure and the officer had no articulable suspicion that appellant was involved in criminal conduct. The court held that "as a matter of law, a request for identification cannot constitute a show of authority sufficient to convert an innocent encounter into a seizure." 482 A.2d 775. *See also United States v. Poitier,* 818 F.2d 679 (8th Cir. 1987).

In a case factually similar to the one at bar, the Texas Court of Criminal Appeals, in *Merideth v. State,* 603 S.W.2d 872 (Tex. Crim. App. 1980), affirmed a conviction of misdemeanor possession of marijuana, rejecting appellant's argument that there was an unlawful search and seizure when the police detected the odor of marijuana after appellant opened the door of his pickup truck in response to their knock. The court said:

> Appellant contends that this was an "investigative stop" and that there was no information available to justify the intrusion. . . . We disagree. This was not an investigative stop. The appellant was not "stopped" by the officer nor was the appellant detained in any manner by the officer until the marihuana was discovered. [Citations omitted.]

When the facts of the case at bar are carefully scrutinized, we think they will support a finding that, under the provisions of A.R.Cr.P. Rule 2.2(a), Officer Newsom

was authorized to request identification information from appellant and the other occupant of the car parked near the high school as a part of his duty to invesigate and prevent crime. We think this was done without a "stop" as referred to in A.R.Cr.P. Rule 3.1. Then, when the car window was rolled down and Newsom smelled marijuana, he had a "reasonable suspicion" that the occupants of the car were committing, had committed or were about to commit a crime which authorized the officer to detain them for a reasonable period under A.R.Cr.P. Rule 3.1 in order to verify their identification or determine the lawfulness of their conduct. Then, when the officer saw the appellant stuffing something down the front of his pants, "there was a logical progression of events" which resulted in probable cause for arrest and the right to search for and seize the marijuana and drug paraphernalia introduced into evidence. *Baxter v. State* and *Purce v. United States, supra. See also United States v. Robinson,* 414 U.S. 218 (1973) (search incident to arrest on probable cause requires no other justification).

Affirmed.

Cooper and Coulson, JJ., agree.

JUDGMENT AND COMMITMENT ORDER

IN THE CIRCUIT COURT OF

JACKSON COUNTY, ARKANSAS

_____ DISTRICT _____ DIVISION

On October 14, 1987, the defendant personally appeared before the Court with legal counsel and, having been informed by the Court of the nature of the charge(s),

of his constitutional and legal rights, of the effect of a guilty plea upon those rights, and of his right to make a statement before sentencing, the Court made the following findings: (check one applicable) [ ] Defendant voluntarily, intelligently, and knowingly entered a plea of [ ] guilty or [ ] Nolo Contendere to the charge(s) herein enumerated and acknowledged factual basis for charge(s); [ ] Defendant is found guilty of said charge(s) by the Court, sitting as trier of fact; [x] Defendant was found guilty at jury trial.

CHANGE OF VENUE FROM ; DEFENDANT'S FULL NAME: Barton Boyd Adams; DATE OF BIRTH 9/9/56; RACE W; SIX M; SID NUMBER

DEFENDANT'S ATTORNEY Leon Nicholson; [ ] PV [ ] AP [x] PD [ ] SELF; PROSECUTING ATTORNEY OR DEPUTY Jim Stallcup.

There being no legal cause shown by the defendant, as requested, why judgment should not be pronounced against him, a judgment of conviction is hereby entered against the defendant on each charge enumerated and court costs assissed. The County Sheriff is hereby ordered and directed to transport the defendant to [x] The Arkansas Department of Correction or [ ] _____ County Jail, where he is sentenced to hard labor for the term specified on each charge:

STATUTE NO. 82-2617; OFFENSE Possession of a controlled substance with intent to deliver; OFFENSE DATE 12/27/86; DOCKET NO. CL86-194; COUNTS 1; F/M ; CLASS C; SENTENCE 4; SUSPENDED NONE.

STATUTE NO. 82-2619; OFFENSE Possession of drug paraphernalia with intent to use; OFFENSE DATE 12/27/86; DOCKET NO. CL86-194; COUNTS 1; F/M ; CLASS C; SENTENCE ; SUSPENDED .

If consecutive, explain:

TIME TO SERVE AT A.D.C.: 4 years. OTHER SENTENCING PROVISIONS [ ] HABITUAL (43-2320); [ ] FIREARM (41-1004/42-2336); [ ] DEADLY WEAPON (43-2336.1); [ ] OTHER:_____ OTHER PAROLE ELIGIBILITY PROVISIONS; Alternative Services (Act 378) (43-2340). The defendant knowlingly and willingly consents to sentence provisions: [ ] 43-2342(c) – Eligible for parole immeidately; [ ] 43-2342(d) – Eligible for parole as normal.

EXPLANATORY NOTES: Possession of controlled substance with intent to deliver. 4 years and $3,000 fine and possession of drug paraphernalia with intent to use a fine of $500.

OTHERFINE $3500.00; RESTITUTION $ ___; COURT COSTS $165.00. [ ] DEATH PENALTY; EXECUTION DATE: _____

[x] DEFENDANT INFORMED OF RIGHT TO APPEAL; JAIL TIME CREDIT: ___ OR [ ] NONE. BOARD PROVISIONS: _____

DATE 10-14-87; CIRCUIT JUDGE (Print or Type) Harold S. Erwin; CIRCUIT JUDGE (Signature) Harold S. Erwin.

DATE 10-15-87; I certify this is a true and correct record of this Court with short report of circumstances

attached. CIRCUIT CLERK DEPUTY (SEAL) /s/ Don Daniels.

DATE 10-14-87; I acknowledge receipt of judgment. Barton Boyd Adams; DEFENDANT (Signature) /s/ Bart Adams.

SHERIFF'S RETURN

DATE REL. ON APPEAL BOND ; DATE RET. TO CUSTODY ; I certify the defendant named within was delivered to: [ ] The A.D.C. or [ ] ___ County Jail; DATE ; SHERIFF/DEPUTY (Signature)